

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x 08 CV 01986
DILIP GIRI AND AVANIA GIRI,

Plaintiffs,
v.
JOSEPHINE R. MCGRAW,

**VERIFIED ANSWER
TO COMPLAINT AND JURY
DEMAND**

Defendant.

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Defendant, Josephine R. McGraw, by her attorneys, HOEY, KING, TOKER & EPSTEIN, answers the Complaint of the Plaintiffs by stating as follows:

1. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.

2. Admits upon information and belief the allegations of paragraph 2.

3. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.

4. Denies, upon information and belief, the allegations of paragraph 4.

5. Responds to paragraph 5 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

6. Denies, upon information and belief, the allegations of paragraph 6.

7. Denies, upon information and belief, the allegations of paragraph 7 and respectfully refers all questions of law to this Honorable Court.

8. Responds to paragraph 8 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

9. Denies, upon information and belief, the allegations of paragraph 9.

10. Admits upon information and belief the allegations of paragraph 10.

11. Admits upon information and belief the allegations of paragraph 11.

12. Denies, upon information and belief, the allegations of paragraph 12.

13. Denies, upon information and belief, the allegations of paragraph 13.

14. Denies, upon information and belief, the allegations of paragraph 14.

15. Denies, upon information and belief, the allegations of paragraph 15.

16. Denies, upon information and belief, the allegations of paragraph 16.

17. Denies, upon information and belief, the allegations of paragraph 17.

18. Denies, upon information and belief, the allegations of paragraph 18.

19. Denies, upon information and belief, the allegations of paragraph 19.

20. Denies, upon information and belief, the allegations of paragraph 20.

21. Denies, upon information and belief, the allegations of paragraph 21.

22. Denies, upon information and belief, the allegations of paragraph 22 and respectfully refers all questions of law to this Honorable Court.

23. Denies, upon information and belief, the allegations of paragraph 23.

24. Responds to paragraph 24 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

25. Denies, upon information and belief, the allegations of paragraph 25.

26. Denies, upon information and belief, the allegations of paragraph 26.

27. Denies, upon information and belief, the allegations of paragraph 27.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

28. The injuries alleged to have been suffered by the Plaintiffs were caused, in whole or part, by the conduct of Plaintiffs. Plaintiffs' claims therefore are barred or diminished in the proportion that such culpable conduct of Plaintiffs bears to the total culpable conduct causing the damages.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

29. The Plaintiffs are precluded from maintaining this action by Insurance Law Article 51 in that Plaintiffs have failed to sustain a serious injury or economic loss greater than the basic economic loss as defined by that law.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

30. Pursuant to CPLR Article 16, the liability of this Defendant to the Plaintiffs for non-economic loss shall not exceed the equitable share of this Defendant determined in accordance with the relative culpability of each person/party causing or contributing to the total liability for non-economic loss.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

31. That recovery, if any, on the Complaint of the Plaintiffs shall be reduced by the amounts paid or reimbursed by collateral sources in accordance with CPLR 4545(c).

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

32. That if it is determined that this answering Defendant is responsible for the acts alleged in the Complaint then Plaintiffs failed to take appropriate action to mitigate any damages.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

33. The injuries and damages alleged in the Complaint of the Plaintiffs were caused or contributed to by Plaintiffs's culpable conduct in assuming the risk under the conditions and circumstances existing.

WHEREFORE, this Defendant demands judgment dismissing the Complaint, together with costs and disbursements, and in the event any judgment or settlement is recovered herein against this Defendant, then this Defendant further demands that such judgment be reduced by the amount which is proportionate to the degree of culpability of any plaintiff, and this Defendant further demands judgment against each other party on the respective cross-claims and/or counterclaims.

DATED: March 26, 2008
New York, New York Yours, etc.

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